STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV
APPEAL NO. 2017AP001341

State of Wisconsin ex rel. Peggy A. Lautenschlager,

Petitioner-Appellant,

v.

Actavis Mid Atlantic, LLC, Actavis Elizabeth LLC, Par Pharmaceuticals Company, Teva Pharmaceuticals USA, lnc., Forest Laboratories, lnc. and Forest Pharmaceuticals, lnc.,

Defendants- Respondents.

PETITIONER-APPELLANTS' BRIEF

ON APPEAL FROM A FINAL ORDER OF THE CIRCUIT COURT
FOR DANE COUNTY, CASE NUMBER 16-CV-1262,
HONORABLE JUAN B. COLAS PRESIDING

LAWTON & CATES, S.C.
Attorney Daniel P. Bach
WI State Bar #1005751

146 East Milwaukee Street, Suite 120
PO Box 399
Jefferson, WI 53549
(920) 674-4567
dbach@lawtoncates.com

Attorneys for Petitioner-Appellant

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INTRODUCTION

This case was brought by relator Peggy A. Lautenschlager on behalf of the State of Wisconsin. The complaint alleges that the defendants defrauded the State of Wisconsin and its Medicaid program by causing the submission of false pricing information regarding prescription drugs, thus violating Wisconsin's False Claims for Medical Assistance Act ("FCMAA"), Wis. Stat. § 20.931, *et seq.*, *repealed by* 2015 Wis. Act 55, § 945n. The defendants filed a Joint Motion to Dismiss the Complaint based on the repeal of Wis. Stat. § 20.931 as part of the 2015 biannual budget bill. The repeal language simply stated that "20.931 of the statutes is repealed." Act 55, § 945n. An initial applicability provision stated that the repeal "does not apply to actions filed before the effective date of this submission." Act 55 § 9318(3f)(a). While the legislature expressly saved any pending FCMAA actions, it said nothing about how the repeal would affect accrued rights of action that were not yet the subject of pending litigation.

The complaint was filed on May 11, 2016. A. App., p. 7. It seeks recovery for false claims submitted under Wisconsin's Medicaid program from 2002-2011. A. App., pp. 23-24, ¶ 60.[1] Lautenschlager's rights of action clearly had accrued well before the FCMAA was repealed.

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[1] The FCMAA statute of limitations regarding those claims was tolled since Lautenschlager's first FCMAA action was filed in 2011.

The general saving provision of Wis. Stat. § 990.04 unequivocally establishes that an "implicit abrogation" of a right of action is no abrogation at all. The general saving provision states that the repeal of any statute does not affect the viability of a *previously accrued right of action*—regardless of whether a lawsuit has been filed—unless "specially and expressly remitted, abrogated or done away with by the repealing statute." Wis. Stat. § 990.04. This saving provision has the "purpose of preventing ... the mere repeal of a statute from defeating existing rights." *Miller v. Chicago & N.W. Ry. Co.*, 133 Wis. 183, 113 N.W. 384, 386 (1907). Because the legislature did not "specially and expressly" abrogate accrued FCMAA rights of action, Lautenschlager asserted that her claim under the act was not abrogated by the repeal.

The circuit court viewed § 9318(3f)(a) and § 990.04 as "closely-related," as both dealt with the repeal of statutory causes of action. A. App., pp. 1-3. The court decided that the statutes created an ambiguity when read together, requiring that the court discern legislative intent. *Id.* The court stated while that the "legislature could have made its intent clearer," it found that the preservation of existing actions set forth in § 9318(3f)(a) was "sufficient, if barely, to express a specific statutory intent" that the repeal of § 20.931 applied to all causes of action except those already filed. A. App., p. 3.

Lautenschlager's position is that the legislature's intent is clear from the text of the general saving provision and from the statute repealing the FCMAA. The legislature created the presumption that the repeal of a statute does not affect the viability of accrued rights of action unless the repealing act "specially and expressly" dissolves the right of action. The statute repealing the FCMAA does not "specially and expressly" abrogate accrued rights of action just because it expressly saves pending actions. Accordingly, Lautenschlager seeks an order reversing the decision of the circuit court and restoring her complaint and ability to seek redress for the fraud perpetrated against the State of Wisconsin.

I. STATEMENT OF ISSUES FOR REVIEW

1. Whether, in repealing Wis. Stat. § 20.931, the legislature specially and expressly extinguished all existing rights of action arising under that statute, except those already filed?

   Answered by the Court: The circuit court found that an ambiguity was created when the repealing act and Wisconsin's general savings statute were read together. The court resolved the ambiguity by finding the legislature, barely, had expressed its intention that the repeal of § 20.931 abrogated all rights of action except those already filed.

II. STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The plaintiff-appellant believes that this appeal may be decided without need for oral argument, as the issue presented is purely a question of law. Publication of this decision may help resolve future disputes involving the viability of an existing, but unfiled, cause of action arising under a statute that is subsequently repealed.

III. STATEMENT OF CASE

A. Background of Medicaid fraud litigation.

Lautenschlager is a former Wisconsin Attorney General. A. App., p. 8 ¶ 1.[2] While serving as attorney general, Lautenschlager filed *State ex rel. Lautenschlager v. Abbott Labs*, Dane County Case No. 04-CV-1709, a lawsuit alleging that thirty-eight defendant drug companies defrauded Wisconsin's Medicaid program by engaging in a scheme to mark up the price for prescription drugs. *Id.*

As Lautenschlager explains in the complaint, the market for prescription drugs is extremely complex. *Id.* ¶ 23. Pharmaceutical companies, such as the defendants in this lawsuit and the defendants in *Abbott Labs*, manufacture drugs that are sold through varying numbers of intermediaries to providers such as physicians, clinics, and pharmacies. *Id.* In turn, the providers sell the drugs to patients. *Id.* Because most patients

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[2] For ease of reference, subsequent citations to the complaint, found at A. App., pp. 7-42, will be to the specified paragraph number(s) of the complaint.

have insurance coverage, however, the cost of the drug often is paid by a private insurance company or by a governmental entity, such as Medicare or Medicaid. *Id.* These entities are known as "payers." *Id.*

Wisconsin, like most states, has no consistent and independent source of information about the amount of money that providers pay for prescribed drugs. *See id.* ¶ 33. Instead, the state relies on the Average Wholesale Price ("AWP") of drugs, as reported by a publisher of pharmaceutical information. *See id.* ¶ 32. Nationwide, one published AWP corresponds to each dosage and package size of each drug manufactured by each manufacturer. *See id.* ¶¶ 23, 32. The AWP is meant to reflect the average price that a drug company charges providers for a given drug. *Id.* ¶ 32. The amount that payers, including Medicaid, repay providers for a drug is based on the AWP rather than on the actual price paid to the drug company. *See id.* ¶¶ 35–36. The AWP, however, is based on pricing information that drug companies themselves report to the pharmaceutical publisher. *Id.* ¶ 32.

This relationship between drug companies and the calculation of the AWP allows for the fraud that is at the heart of *Abbott Labs* and this case. If a drug manufacturer can cause a "payer" to reimburse a provider at a higher price for a drug than the provider actually paid the manufacturer, the provider keeps the difference as profit. *Id.* ¶ 27. This creates an incentive for providers to purchase drugs from manufacturers that report inflated AWPs. *Id.*

Manufacturers that reported a more inflated AWP for their products in turn obtained a larger share of the market because providers became aware that they could earn a higher profit margin by purchasing from those manufacturers. *Id.* ¶ 40. In sum, drug manufacturers reported fraudulently high AWPs so that providers would give them more business and collect a higher profit from payers including Medicaid—at the expense of the state.

In *Abbott Labs*, a trial was held against one of the drug company defendants, which was found to have committed thousands of violations of the Medicaid fraud statute. *State v. Abbott Labs.*, 2012 WI 62, ¶ 23, 341 Wis. 2d 510, 529, 816 N.W.2d 145. Lautenschlager brings the current lawsuit against companies that were not defendants in *Abbott Labs* and that did the same thing.

B. The False Claims for Medical Assistance Act.

The FCMAA prohibited acts related to making false claims for medical assistance, including knowingly causing a false record to be made to obtain approval or payment of a false claim and conspiring to defraud the state by obtaining payment of a false claim. Wis. Stat. § 20.931(2), *repealed by* 2015 Wis. Act 55, § 945n. The qui tam provision of the FCMAA states that, subject to exceptions, "any person may bring a civil action as a qui tam plaintiff against a person who commits an act in violation of sub. (2) for the person and the state in the name of the state." *Id.* § 20.931(5)(a).

A qui tam complaint under the FCMAA is filed under seal and served on the attorney general but not on the defendant for 60 days from the date of filing, to afford the attorney general the opportunity to decide whether to intervene in the action, initiate an alternate remedy, or notify the court that he or she declines to proceed with the action. *Id.* § 20.931(5)(b), (d). Regardless of whether the attorney general intervenes or initiates an alternate remedy such as an administrative proceeding, the qui tam plaintiff "has the right to continue as a party to the action." *Id.* § 20.931(6). If the attorney general declines to proceed, "the person bringing the action may proceed with the action." *Id.* § 20.931(5)(d)(2).

C. Prior FCMAA lawsuits.

Lautenschlager and other qui tam plaintiffs filed a prior FCMAA action against Defendants in December 2011 ("2011 Action"). *See* Smith Aff., Ex. 6.[3] After filing an amended complaint to correct an error in the caption, the plaintiffs in the 2011 Action filed a second amended complaint to address the defendants' assertions that the amended complaint did not sufficiently apprise them of the nature of the asserted fraudulent conduct. *See* Smith Aff., Exs. 7, 8. In an oral ruling on December 19, 2013, the circuit court ruled that the second amended complaint did not allege fraud with sufficient particularity and granted the plaintiffs leave to file a third amended

[3] Affidavit of Todd G. Smith ("Smith Aff."), Dkt. No. 27, filed in support of the Joint Motion.

complaint by July 1, 2014, and engage in nonparty discovery. Smith Aff., Ex. 10 at 12:19–21, 16:19–24. In February 2014, the circuit court entered a memorandum decision dismissing the second amended complaint. Smith Aff., Ex. 11. The February 2014 order did not specify, however, whether it was a final, appealable order or whether the dismissal was to be with or without prejudice. *See id.*

To clarify the nature of the dismissal, the parties filed proposed orders. The plaintiffs proposed a dismissal of the second amended complaint without prejudice, which would allow them to file a third amended complaint without requiring an appeal. Obrist Aff., Ex. A.[4] However, no order was entered before the statutory appeal deadline would lapse for the February 2014 memorandum decision (if the Court of Appeals considered the order to be appealable as of right). Therefore, as a precautionary measure, the plaintiffs filed notice of appeal of the February 2014 memorandum decision and specified that an order from the circuit court allowing the plaintiffs to file a third amended complaint would moot the appeal. Obrist Aff., Ex. B.

In June 2014, the circuit court reversed its oral ruling of December 19, 2013. Instead of allowing the plaintiffs to file a third amended complaint, the court denied the request to amend the complaint and vacated the previously set briefing schedule for a motion to amend. *See* Smith Aff., Ex. 13. On the

[4] Affidavit of Gretchen S. Obrist ("Obrist Aff."), Dkt. No. 53, filed in support of Plaintiff's Opposition to Defendants' Joint Motion to Dismiss.

same day, the circuit court entered final judgment of dismissal without prejudice. Smith Aff., Ex. 14.

Because the circuit court had both denied the plaintiffs' motion to amend and dismissed the second amended complaint without prejudice, the plaintiffs filed a new FCMAA action with a revised complaint ("2014 action"), rather than pursuing the appeal of the second amended complaint. In accordance with the FCMAA, the plaintiffs filed the complaint under seal to afford the attorney general the statutory opportunity to intervene. *See* Smith Aff., Ex. 15. Meanwhile, in September 2014, the plaintiffs voluntarily dismissed the appeal of the 2011 Action. *See* Smith Aff., Ex. 16 at 3.

The defendants moved to dismiss the 2014 action in part based on the argument that the 2014 Action was filed in violation of the FCMAA's "first-to-file" rule, which prohibits anyone other than the state from bringing an action grounded on the same facts as a pending FCMAA action. Smith Aff., Ex. 17. The circuit court denied the motion to dismiss, but on January 12, 2016, the Court of Appeals granted the defendants' petition for leave to appeal the circuit court's order and directed the circuit court to dismiss the case based solely on the fact that the 2014 action was filed some weeks before the same plaintiffs voluntarily dismissed their appeal of the 2011 action. Smith Aff., Ex. 23. On remand, the circuit court dismissed the 2014 action—again without prejudice. Smith Aff., Ex. 24.

D. The FCMAA was repealed, but the legislature was silent as to the effect of the repeal on accrued rights of action that had not been filed.

In July 2015, while the 2014 Action was pending before the circuit court, the Wisconsin legislature repealed the FCMAA in a one-sentence subsection of an appropriations act. *See* 2015 Wis. Act 55, § 945n ("20.931 of the statutes is repealed."). A later subsection provides that the treatment of the FCMAA would not apply to actions filed before the effective date of that subsection, but the act is silent as to what effect the repeal of the FCMAA would have on rights of action that had accrued but were not filed by the effective date of the repeal. *See id.* § 9318(3f)(a).

E. The current action is filed.

Highlighting the law in Wisconsin that the repeal of a statute does not nullify accrued rights of action or impair civil liability for acts committed before a statute's repeal absent express language to that effect, *See* Wis. Stat. § 990.04, on May 11, 2016 Lautenschlager filed the complaint in this action under seal and served a copy on the attorney general. Dkt. No. 1. After the State declined to intervene, the complaint was unsealed on June 10, 2016, following which the defendants were duly served. Dkt. Nos. 3, 6, 12-15. On September 20, 2016, the defendants filed a Joint Motion to Dismiss the Complaint Based on the Repeal of Wis. Stat. § 20.931. Dkt. No. 35. In their memorandum in support of that motion, the defendants argued first that Lautenschlager hadn't accrued any personal rights of action because the

cause of action belonged to the State. They also argued that by expressly preserving actions already filed under the FMCAA, the legislature intended to preserve only such actions when it repealed the FMCAA. Dkt. No. 38. On May 15, 2017, the circuit court signed its Decision and Order, rejecting the defendants' first argument but finding that the repeal of § 20.931 abrogated the cause of action underlying this case. A. App., pp. 2, 3 The circuit court granted the motion to dismiss the complaint, and this appeal followed.

IV. ARGUMENT

Under established Wisconsin law, an accrued right of action pursuant to a statute remains viable even after the statute's repeal unless the legislature "specially and expressly" abrogates it. Wis. Stat. § 990.04. The statute repealing the FCMAA does not expressly abrogate accrued rights of action. The interpretation and reconciliation of statutes presents a question of law which this Court reviews de novo, without deference to the circuit court's decision. *Goff v. Seldera,* 202 Wis. 2d 601, 617, 550 N.W.2d 144 (Ct. App. 1996).

A. Wisconsin's legislature expressly chose to protect accrued *rights of action* from being implicitly abrogated when a statute is repealed.

When interpreting a statute, courts "assume that the legislature's intent is expressed in the statutory language." *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. Thus, "statutory interpretation 'begins with the language of the statute. If the

meaning of the statute is plain, [courts] ordinarily stop the inquiry.'" *Id.* ¶ 45 (quoting *Seider v. O'Connell*, 2000 WI 76, ¶ 43, 236 Wis. 2d 211, 612 N.W.2d 659).

The meaning of the general saving provision is unmistakable. Under this provision, a right of action that accrued pursuant to a statute before that statute was repealed is preserved and may proceed through final judgment unless the repealing statute "specially and expressly" abrogates the action:

> The repeal of a statute hereafter *shall not remit, defeat or impair any civil or criminal liability for offenses committed, penalties or forfeitures incurred* ***or rights of action accrued*** *under such statute before the repeal thereof, whether or not in course of prosecution or action at the time of such repeal*; but all such offenses, penalties, forfeitures and rights of action created by or founded on such statute, liability wherefore shall have been incurred before the time of such repeal thereof, shall be preserved and remain in force notwithstanding such repeal, *unless specially and expressly remitted, abrogated or done away with by the repealing statute*. And criminal prosecutions and *actions at law or in equity founded upon such repealed statute, whether instituted before or after the repeal thereof, shall not be defeated or impaired by such repeal* but shall, notwithstanding such repeal, proceed to judgment in the same manner and to the like purpose and effect as if the repealed statute continued in full force to the time of final judgment thereon, *unless the offenses, penalties, forfeitures or rights of action on which such prosecutions or actions shall be founded shall be specially and expressly remitted, abrogated or done away with by such repealing statute*.

Wis. Stat. § 990.04 (emphases added).

This was not always the rule in Wisconsin. In *Dillon v. Linder*, 36 Wis. 344 (1874), the Wisconsin Supreme Court considered whether a

plaintiff could continue to litigate a cause of action[5] pursuant to a statute that was repealed after she filed suit. The court recognized "the power of the legislature to save rights accrued, or actions pending, under the repealed statute, by express provision in the repealing statute [or] by a general, prospective statute." *Id.* at 350. Finding that the general saving statute in effect at the time protected only a *proceeding* conducted pursuant to a repealed statute but not the *cause of action* itself, the court concluded that the cause of action did not survive the repeal. *See id.* at 353–54 ("Being only in process of suit, it was only an inchoate and imperfect right under the statute, little more than a *jus precarium*, resting on the existence of the statute which gave it, and falling with its repeal.").

Dillon led to the enactment of the saving provision now codified in § 990.04 "for the very purpose of preventing, in the future, the mere repeal of a statute from defeating existing rights." *See Miller*, 113 N.W. at 386. The Wisconsin Supreme Court has confirmed the apparent meaning of § 990.04: "[I]t is the clear intention of sec. 990.04 to preserve all rights which may have arisen before the repeal of a statute unless such rights are 'specially and expressly remitted, abrogated or done away with by the repealing statute.'" *Niesen v. State*, 30 Wis. 2d 490, 493, 141 N.W.2d 194 (1966).

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[5] Both in *Dillon* and in subsequent decisions interpreting Wis. Stat. § 990.04, the Wisconsin Supreme Court has used the terms "right of action" and "cause of action" interchangeably. See *Dillon*, 36 Wis. at 349–50; *Niesen v. State*, 30 Wis. 2d 490, 493–94, 141 N.W.2d 194 (1966).

B. The act repealing the FCMAA does not expressly abrogate accrued rights of action.

The relevant subsection of the act repealing the FCMAA provides that the treatment of the FCMAA does not apply to actions filed before the effective date, but is silent as to the effect of the repeal on accrued causes of action that had not yet been filed. *See* 2015 Wis. Act 55, § 9318(3f)(a). In their argument to the circuit court, the defendants reasoned that "[b]y expressly saving filed actions from repeal, the legislature necessarily excluded any unfiled actions—regardless of when the conduct occurred." Mem. J. MTD 16. But silence is not an express abrogation.

Although the circuit court found that reading § 9318(3f)(a) and § 990.04 together created an ambiguity, the strong language of § 990.04 reflects the legislature's rule that an implicit abrogation of a cause of action is no abrogation at all. Without an express abrogation, an accrued cause of action survives the repeal of the statute that authorized the action. The statute repealing the FCMAA did not expressly abrogate accrued causes of action. Thus, Lautenschlager's FCMAA claim survives.

The circuit court found that "(t)he only way to avoid discarding § 9318(3f)(a) as superfluous is to read it as a particular savings clause narrowing the applicability of the general savings clause to pending cases…" A. App., pp. 2-3. Yet by unnecessarily according § 9318(3f)(a) the interpretation it did, the circuit court overlooked the legislature's emphatic

declaration in § 990.04 that no accrued causes of action would disappear with a statute "unless specially and expressly remitted, abrogated or done away with by the repealing statute." Moreover, it is quite possible to reconcile both statutes as protecting existing claims, while the general savings statute protects existing rights of action as well. That is the plain reading of each statute. As the meanings of the general saving provision and the repeal statute are clear, it is improper and unnecessary to speculate about unexpressed reasons that motivated the legislature to expressly discuss only filed causes of action in § 9318(3f)(a). *See State ex rel. Kalal*, 2004 WI 58, ¶ 44 ("It is the enacted law, not the unenacted intent, that is binding on the public. Therefore, the purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect."). The act repealing the FCMAA contains no express abrogation of accrued FCMAA claims, so they were not abrogated.

It would have been simple for the legislature to have expressly done away with all unfiled causes of action brought pursuant to the FCMAA if that were the legislature's goal. For example, the legislature could have tracked the text of § 990.04 by writing in the repeal act that "all causes of action not filed before the effective date of the repeal act are specially and expressly remitted, abrogated or done away with." Because the act repealing

the FCMAA did not expressly repeal accrued causes of action, the cause of action Lautenschlager had accrued before the repeal, and survived the repeal.

Indeed, it would be particularly unjust to allow Lautenschlager's cause of action to be "implicitly abrogated," considering that she has vigorously litigated this cause of action since 2011. Lautenschlager did not sit on her rights in asserting a qui tam claim. Yet, if the defendants' theory were correct and any FCMAA actions that were not pending on the effective date of the repeal were extinguished, Lautenschlager would have had no recourse even though the 2014 action was pending at the time of the repeal and the circuit court dismissed the complaint "without prejudice." *See* Smith Aff., Ex. 24. It is that same right of action she is pursuing here, attempting to hold drug companies accountable for defrauding the State of Wisconsin through their kickback scheme.

C. The FCMAA right of action in this case accrued before the FCMAA was repealed.

The dispositive question under § 990.04 is whether the defendants' "liability" under the "right[] of action" brought here had "been incurred before the time of" repeal. Here, the allegations in the complaint relate to acts that took place before the repeal of § 9318(3f)(a).[6] Hence, just as was true in

[6] As noted above, the Wisconsin Supreme Court has used the terms "cause of action" and "right of action" interchangeably. *See supra* note 5. A cause of action is "[a] group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person." *Cause of Action*, *Black's Law Dictionary* (10th ed. 2014). In another context, the Wisconsin Supreme Court has explained that "in the minds of the makers of the Code the 'cause of action' is made up

Niesen, the repealed statute giving rise to a right of action "governs this action because it was the law when the wrongful act alleged in the complaint occurred." 30 Wis. 2d at 492. The defendants' "liability" was "incurred" as soon as the acts that create liability were committed, and every one of those acts occurred years before repeal. Indeed, that the defendants incurred liability long before repeal of the FCMAA is most obviously evidenced by the 2011 and 2014 cases, which alleged the same cause of action based on the same facts and theories of liability.

Wis. Stat. § 990.04 also equates "accrued" rights of action, which "repeal of a statute" does not "remit, defeat or impair," with right of action "liability wherefore shall have been incurred before the time of [the] repeal," which, likewise, are "preserved and remain in force" unless "specially and expressly remitted, abrogated or done away with." Thus, because the defendants incurred liability before repeal under the right of action asserted here, that right of action accrued before repeal.

This plain statutory language is bolstered by *Lands' End, Inc. v. City of Dodgeville*, 2016 WI 64, 370 Wis. 2d 500, 881 N.W.2d 702, whose reasoning shows that the right of action here accrued before repeal. The lead opinion in *Lands' End* teaches that an "accrued" right of action means an

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of the facts necessary to be pleaded and proved in order to establish the defendant's liability to the plaintiff." *McArthur v. Moffett*, 143 Wis. 564, 128 N.W. 445, 447 (1910). Thus, a plaintiff has pleaded a "cause of action" if he or she has set forth a factual basis demonstrating a defendant's liability to the plaintiff.

action that is "legally enforceable"—i.e., that a right of action accrues as soon as the acts that have created liability have occurred. *Id.* ¶ 72. Hence, "a right of action for negligence" accrues "on the date of the accident and injury." *Id.* The right of action here, like *Lands' End*'s example of a right of action for negligence, accrued when Defendants violated the FCMAA by submitting a false claim to the state.

V. CONCLUSION

The legislature's intent in enacting § 990.04 is unmistakable in the text of the statute—unless a repealing statute "specially and expressly" abrogates accrued causes of action, those actions survive the repeal of the statute on which they are founded. That rule expressly applies to actions that were not filed as of the date of the repeal. The legislature did not implicitly abrogate accrued causes of action under the FCMAA. Because Lautenschlager's cause of action accrued before the repeal of the FCMAA and has been tolled since 2011, Lautenschlager respectfully requests that this Court reverse the decision of the circuit court dismissing the complaint.

Respectfully submitted this 11th day of September, 2017.

LAWTON & CATES, S.C.

Daniel P. Bach, SBN 1005751
146 E. Milwaukee Street, Suite 120
Jefferson, Wisconsin 53549
(920) 674-4567
dbach@lawtoncates.com

James A. Olson, SBN 1009442
Dixon R. Gahnz, SBN 1024367
345 West Washington Ave., Suite 201
Madison, Wisconsin 53701-2965
(608) 282-6200
jolson@lawtoncates.com
dgahnz@lawtoncates.com

KELLER ROHRBACK L.L.P.

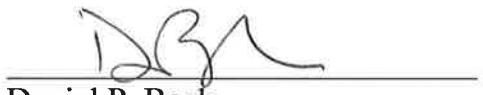
Lynn Lincoln Sarko, SBN 1010823
Mark A. Griffin *(Pro Hac Vice)*
Raymond J. Farrow *(Pro Hac Vice)*
Gretchen S. Obrist *(Pro Hac Vice)*
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
(206) 623-1900
lsarko@kellerrohrback.com
mgriffin@kellerrohrback.com
rfarrow@kellerrohrback.com
gobrist@kellerrohrback.com

Attorneys for Petitioner-Appellant

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 23 pages and 5434 words.

Dated this 11th day of September, 2017.



Daniel P. Bach

CERTIFICATE OF COMPLIANCE
WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12). I further certify that:

The electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this11th day of September, 2017.

Daniel P. Bach

CERTIFICATE OF SERVICE

I certify that on September 11, 2017, this Petitioner-Appellants' Brief and Appendix was hand delivered to the Clerk of Court of Appeals. I further certify that true and correct copies were served upon the following attorneys by first-class mail.

Attorney Josh Johanningmeier
Attorney Todd G. Smith
Attorney Dustin B. Brown
Godfrey & Kahn, S.C.
One East Main Street, Ste. 500
P.O. Box 2719
Madison, WI 53701

Attorney Lester A. Pines
Attorney Susan Crawford
Cullen Weston Pines & Bach, LLP
122 W. Washington Ave #900
Madison, WI 53703

Attorney Peter J. Venaglia
Attorney Bruce M. Handler
Attorney W. Patrick Downes
Schaeffer Venaglia Handler & Fitzsimmons, LLP
1001 Avenue of the Americas, 10th Floor
New York, NY 10018

Attorney Paul K. Dueffert
Attorney Yifan Wang
Williams & Connoly, LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005

Attorney Gregory T. Everts
Attorney Rachel A. Graham
Quarles & Brady, LLP
33 E. Main St., Ste. 900
Madison, WI 53703-3095

Attorney Eric J. Hatchell
Attorney Roberta F. Howell
Foley & Lardner LLP
150 East Gilman Street
Madison, WI 53703-1482

Timothy C. Samuelson
Assistant Attorney General
Wisconsin Dept. of Justice
P.O. Box 7857
Madison, WI 53707-7857

Daniel P. Bach